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International Covenant on Civil and Political Rights

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Human Rights Committee
Sixty-fifth session

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Lesotho

1. The Committee considered the initial report of the Government of Lesotho (CCPR/C/81/Add.14) at its 1743rd and 1744th meetings (CCPR/C/SR.1743–1744), held on 1 April 1999, and adopted the following concluding observations at its 1747th and 1748th meetings (CCPR/C/SR.1747–1748), held on 6 April 1999.

A. Introduction

2. The Committee welcomes the initial report of Lesotho, which was prepared in conformity with the Committee's guidelines. The Committee notes that the report was submitted after a five-year delay, which was explained by the delegation as being due to the internal disturbances in the State. The Committee notes that the delegation itself admitted the incompatibility with the Covenant of some provisions of its Constitution and also of its legislation and practices.

B. Principal positive aspects

3. The Committee welcomes the establishment of an ombudsman under the Constitution. The Committee notes that the State party has started courses for training of police officers, prison officers and magistrates in human rights.

4. The Committee welcomes the fact that only the police have the power to arrest and that the security forces have been stripped of this power since 1996.

5. The Committee welcomes the establishment of a Commission of Enquiry into the Conduct and Results of the Lesotho General Elections held in May 1998, and takes note of the establishment of an Interim Political Authority in October 1998 with the object of

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facilitating and promoting, in conjunction with legislative and executive structures in Lesotho, the preparations for the holding of general elections within a period of 18 months.

C. Principal areas of concern and recommendations

6. The Committee is seriously concerned that section 18 (4) (a) (b) and (c) of the Constitution allows for the application of legislation and laws, including customary laws, which are discriminatory and incompatible with articles 2 (paragraph 1), 3, 23 and 26 of the Covenant.

7. The Committee is also concerned that sections 7 (3) (f) and (6); 14 (2) (c); 15 (2) (c); and 16 (2) (c) of the Constitution allow for the imposition of restrictions on the rights protected by articles 12 (freedom of movement), 19 (freedom of expression), 21 (peaceful assembly) and 22 (freedom of association) which exceed those permitted by the Covenant.

8. The Committee is further concerned that sections 12 (11) (a) and (13) of the Constitution may raise issues of compatibility with article 14, paragraphs 2 and 3 (d), of the Covenant and that section 21 (1) of the Constitution may authorize derogation of rights, which is incompatible with article 4, paragraph 1, of the Covenant.

9. The Committee recommends that the State party take measures to bring all its laws into full conformity with the Covenant.

10. The Committee is gravely concerned that both common and customary law permit discrimination against women by treating them as minors. The Committee notes with concern that, under customary law, inheritance and property rights of women are severely restricted and that under customary law as well as under common law women may not enter into contracts, open bank accounts, obtain loans or apply for passports without the permission of their husbands. The Committee welcomes the statement of the delegation that these rules are not commonly being applied in practice. The Committee, however, urges the State party to take measures to repeal or amend these discriminatory laws and eradicate these discriminatory practices, which are in violation of articles 3 and 26 of the Covenant.

11. The Committee is concerned that the law in force in Lesotho makes abortion illegal except in cases where the woman concerned is of unsound mind or the conception is the result of rape or incestuous intercourse. The Committee recommends the State party to review the law of abortion to provide for situations where the life of the woman is in danger.

12. The Committee expresses its grave concern about the fact that the practice of female genital mutilation appears to continue to exist in parts of Lesotho, as noted in the report of the Special Rapporteur on Violence against Women. The Committee calls for the eradication of this practice, which is contrary to human dignity and violates various human rights, including the right to life (article 6) and the right to protection against cruel, inhuman and degrading treatment (article 7), and recommends that the practice be made punishable under law and that educational programmes be undertaken in this regard.

13. The Committee notes with concern that a sexual relationship between consenting adult partners of the same sex is punishable under law. The Committee recommends that the State party amend the law in this respect.

14. The Committee is concerned about the continuing influence of the military in civilian matters and in particular about the climate of impunity for crimes and abuses of authority committed by members of the military. The Committee strongly urges that measures be taken by the State party to ensure the primacy of civil and political authority.

15. The Committee notes the statement by the delegation that capital punishment is no longer carried out in practice and recommends its early abolition.

16. The Committee notes with concern that there are fairly numerous instances of torture of persons in custody. The Committee strongly urges the State party to establish an independent authority consisting of respected civilians for receiving and investigating complaints of torture and ill-treatment, giving redress to the victims and prosecuting those responsible for such torture and ill-treatment.

17. The Committee is concerned about the excessive use of force by the police and security forces, including shooting of suspects to prevent their flight even in cases where there is no violence on the part of the suspects. The Committee urges the State party to investigate such cases and ensure the prosecution and punishment of those responsible. Impunity for violation of human rights is incompatible with the State party's obligation under article 2, paragraph 3, of the Covenant.

18. With regard to pretrial detention the Committee is concerned about the detention of suspects for periods longer than 48 hours before they are brought before a magistrate. In particular it notes with concern that the officers who were involved in the mutiny of 1994 were held for many months before commencement of court martial proceedings and so also were the junior officers involved in the mutiny of 1998. The Committee recommends that the State party take firm action to enforce compliance with its own legislative provision limiting pretrial detention to 48 hours before appearance before a magistrate.

19. The Committee is concerned that no action has so far been taken to prosecute law enforcement officers and members of the private security agency responsible for the killings in Butha-buthe in 1995. The Committee recommends to the State party to take the necessary action against those responsible.

20. The Committee expresses concern about the treatment of detainees in contravention of articles 7 and 10 of the Covenant. While it notes the statement by the delegation that corporal punishment has been abolished, it observes with concern that the State party report indicates that corporal punishment is still being practised, provided that medical doctors are present. The Committee urges the State party to take the necessary measures to improve prison conditions and to abolish totally corporal punishment both in law and in practice.

21. The Committee notes that the State party has through a Cabinet decision dated 23 November 1995 provided for permanent and pensionable status for judges. The Committee, however, recommends that this decision be implemented through appropriate legislation.

22. The Committee is seriously concerned about reports of harassment of and repeated libel suits against journalists who criticize the Government of Lesotho. The Committee is also gravely concerned about the reports received by the Committee that newspapers which adopt a negative attitude against the Government are refused advertisement by the State and parastatal companies, and that journalists working for the State who are seen at the opposition demonstrations are required to submit their resignations. The Committee urges the State party to respect freedom of the press and desist from taking any action which would violate the freedom of the press.

23. The Committee is concerned that the relevant authority under the Printing and Publishing Act has unfettered discretionary power to grant or to refuse registration to a newspaper, in contravention of article 19 of the Covenant. The Committee recommends to the State party to provide for guidelines for the exercise of discretion and procedures for effective review of the validity of the grounds for refusal of registration and to bring its legislation into conformity with article 19 of the Covenant.

24. The Committee is concerned that the National Security Service and other security agencies are given the power to intercept mail and tap telephones without any safeguards and without any possibility of review of the decision of the Authority. The Committee urges the State party to provide safeguards for the exercise of the power to intercept mail and tap telephones, with independent supervision.

25. The Committee is concerned that, although there is improvement in the participation of women in the public and private sectors, the participation of women is still inadequate. The Committee urges the State party to take the measures needed, including, if necessary, affirmative action to further improve the participation of women in political life as well as public life, including public and judicial services.

26. The Committee sets the date for the submission of Lesotho's periodic report as _____ It urges the State party to make available to the public the text of the State party's initial report and the present concluding observations. It requests that the next periodic report be widely disseminated among the public, including non-governmental organizations operating in Lesotho.